

editor's note

footnote 1 on incorrect page in original

OWYHEE CATTLEMEN'S ASSOCIATION
IDAHO BOARD OF LAND COMMISSIONERS
IDAHO CATTLEMEN'S ASSOCIATION

IBLA 81-184, 81-185, 81-252

Decided February 10, 1983

Appeals from decision of the State Director, Idaho State Office, Bureau of Land Management, denying protests of wilderness study area designations in the Owyhee Planning Area, Boise District.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Inventory and Identification -- Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

Where the wilderness inventory discloses an area to be affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable, the presence of minor intrusions which are substantially unnoticeable will not preclude designation as a wilderness study area.

2. Federal Land Policy and Management Act of 1976: Inventory and Identification -- Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

A decision to draw the boundary of a wilderness study area along the edge of an imprint of man will be affirmed in the absence of a showing that the adjacent imprint so impinges upon lands within the wilderness study area as to deprive them of wilderness characteristics.

APPEARANCES: W. Hugh O'Riordan, Esq., Boise, Idaho, for appellant, Owyhee Cattlemen's Association; Bradley G. Andrews, Esq., Office of the Attorney

General, State of Idaho, for appellant, Idaho Board of Land Commissioners; Michael R. Mogensen, Executive Vice President, Idaho Cattlemen's Association; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Owyhee Cattlemen's Association, the Idaho Board of Land Commissioners, and the Idaho Cattlemen's Association have appealed from a decision of the State Director, Idaho State Office, Bureau of Land Management (BLM), dated November 13, 1980, denying their protests of the January 16, 1980, decision designating 10 inventory units in the Owyhee Planning Area, Boise District, as wilderness study areas (WSA's). See 45 FR 75588 (Nov. 14, 1980). 1/ We have consolidated these cases for consideration and decision because of the similarity of the issues.

The State Director's action establishing the WSA's was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands identified during the inventory required by section 201(a) of FLPMA as having the wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following the review of such areas or islands, the Secretary shall from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), as follows:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's announcement on November 13, 1980, of those areas designated as WSA's marks the end of the inventory phase of the review process and the beginning of the study phase. BLM analyzed each of the Owyhee units and

determined that 234,353 acres in the 10 units on appeal satisfied the requisite wilderness characteristics and were suitable for designation as a WSA. The State Director eliminated four units from WSA consideration.

Counsel for appellants raise several issues in their statement of reasons for appeal. First, counsel alleges that section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), provides a two part standard for wilderness. Appellants allege that as a prerequisite to wilderness designation the statute requires a finding that an area is "untrammelled by man, [a place] where man himself is a visitor who does not remain." Counsel argue that reliance by BLM on the wilderness criteria identified in the Wilderness Inventory Handbook, 2/ consisting of size (at least 5,000 acres), naturalness (the imprint of man's work must be substantially unnoticeable), and an outstanding opportunity for either solitude or a primitive and unconfined type of recreation, negates the requirement that the land be a place where man is a visitor who does not remain. Appellants also take issue with the BLM definition of a "road," as distinguished from a "way."

Further, appellants allege that use of the physical edge of a road as a WSA boundary as directed by Organic Act Directive (OAD) 78-61, Changes 2 and 3, including the practice of drawing the boundary of a unit around a road which intrudes into the interior of a unit but does not sever the unit into two parts (a practice sometimes referred to as cherrystemming), ignores the impact of this imprint of man on the inventory unit in violation of the statutory criteria. Counsel also take issue with the inclusion by BLM in WSA's of areas with "apparent naturalness," including areas where the ecosystem has been affected by man's activity.

Appellants further contend that a finding that an outstanding opportunity for solitude exists somewhere in an inventory unit is not a sufficient basis for designating that unit a WSA. Counsel for appellants dispute the exclusion from consideration during the inventory stage of impacts -- sights and sounds -- from sources outside the inventory unit. Appellants argue that public participation in the inventory process has been hampered by the application of standards which make the public comments irrelevant. Finally, it is alleged that the BLM decisions are not supported by findings of fact and reasoned opinions.

<u>1/</u> Appellants protested the designation of the following units as WSA's:		<u>Unit Number</u>	<u>Unit Name</u>
16-40	North Fork Owyhee River		
16-41	Horsehead Spring		
16-42	Squaw Creek Canyon		
16-44	Deep Creek-Nickel Creek		
16-45	Middle Fork Owyhee River		
16-47	West Fork Red Canyon		
16-49a	Deep Creek-Owyhee River		
16-49d	Yatahoney Creek		
16-49e	Battle Creek		
16-52	Upper Owyhee River		

2/ Bureau of Land Management, U.S. Department of the Interior, Wilderness Inventory Handbook (Sept. 27, 1978) at 6 (hereinafter cited as WIH).

[1] Despite appellants' contention that the statutory reference to a wilderness as an area where man is a "visitor who does not remain," requires the absence of any indicia of the presence of man, the Board has considered the question and held that this is not what the statute requires. The language of section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) requiring that a wilderness area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable provides ample support for the proposition that a wilderness area need not be free from all intrusions. Square Butte Grazing Association, 67 IBLA 25, 28 (1982). Thus, we cannot find error with the holding of BLM that such intrusions of man as livestock fencing and spring development do not necessarily preclude a finding of wilderness characteristics at the inventory stage where the impact of these intrusions is evaluated and determined to be substantially unnoticeable and, thus, not to detract from the naturalness of the area (WIH at 12-13); Tri-County Cattlemen's Association, 60 IBLA 305, 309 (1981). Application of the standard of "apparent naturalness," i.e., whether the area appears natural to a visitor who is not familiar with the biological composition of natural ecosystems as opposed to ecosystems affected by man, in the wilderness inventory procedure has been upheld by the Board. Catlow Steens Corp., 63 IBLA 85 (1982).

[2] The definition of a road as used by BLM in the wilderness inventory process is taken from H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976): "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road" (WIH at 5). Further, a boundary of a WSA should be located on the physical edge of an imprint of man (such as a road) rather than being located on the basis of a zone of influence around the imprint (OAD 78-61, Change 2 at 5). Decisions reached by BLM in the wilderness inventory process applying this definition of a road and drawing WSA boundaries along the edge of such imprints have been affirmed by this Board. See, e.g., Mitchell Energy Corp., 68 IBLA 219 (1982).

This is consistent with the position taken by BLM that the imprints of man outside the boundary of the unit are only considered during the inventory phase where the impact within the unit is so imposing that it cannot be ignored (OAD 78-61, Change 3 (July 12, 1979)). We have previously upheld this principle as a reasonable application of the wilderness criteria to the inventory process. Jacqueline L. McGarva, 60 IBLA 278, 281 (1981). This is subject to the limitation, however, that to the extent that the imprints of man existing outside the unit so impinge upon areas within the adjacent unit as to deprive them of wilderness characteristics, such imprints are properly considered during the inventory process. Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981). ^{3/} Similarly, this Board has upheld the BLM practice of drawing the boundaries of units so as to exclude lands occupied by roads or

^{3/} The lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory as meeting the outstanding opportunity criterion. Petroleum, Inc., 61 IBLA 139 (1982).

other intrusions as nonwilderness corridors (a practice sometimes referred to as cherrystemming) thus permitting wilderness review of the adjacent lands otherwise possessing wilderness characteristics as not being an unlawful practice. National Outdoor Coalition, 59 IBLA 291 (1981). This approach is also subject to the limitation noted in Union Oil Co. (On Reconsideration), *supra*, that the effects of the imprints of man outside the unit are properly considered during the inventory phase where they so impinge upon the area within the unit as to deprive it of wilderness characteristics.

Contrary to appellants' allegation that the approach of the BLM in conducting the inventory for these units has precluded effective participation by the public, the record discloses that the filing of the protests by appellants after the proposed inventory decision was published resulted in a substantial further field examination of the units for the purpose of reevaluating the presence or absence of wilderness characteristics in light of the imprints of man described in appellants' protests. As a result of this further consideration, boundaries of two of the units were redrawn to exclude areas discovered to be lacking in wilderness qualities. In addition, the record reveals that the January 16, 1980, inventory decision which prompted the protests was itself reached only after evaluation of substantial public input regarding imprints of man within the units asserted to preclude wilderness qualities. This evaluation itself resulted in exclusion of substantial areas within the inventory units from wilderness consideration.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed from was based either on a clear error of law or a demonstrable error of fact. John W. Black, 63 IBLA 165 (1982). In their reasons for appeal, appellants have not alleged the existence of any imprints of man not previously presented to and evaluated by BLM. Rather, appellants take issue with the application of the standards discussed above resulting in the conclusion that the areas possess wilderness characteristics. Despite the disagreement of appellants with the results of the BLM inventory, they have not met their burden on appeal. The record supports the decision appealed from.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

